



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: AUGUST 17, 2022

IN THE MATTER OF:

Appeal Board No. 622889

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination reducing the claimant's right to receive future benefits by 220 effective days and charging a civil penalty of \$4,532.02 on the basis that the claimant made willful misrepresentations to obtain benefits. The claimant requested a hearing.

The Administrative Law Judge held a combined telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed April 13, 2022 (), the Administrative Law Judge sustained the initial determinations holding that the claimant was not totally unemployed, charging the claimant with a recoverable overpayment of PEUC and FPUC benefits; and overruled the initial determination reducing the claimant's right to receive future benefits by 220 effective days and charging a civil penalty of \$4,532.02 on the basis that the claimant made willful misrepresentations to obtain benefits.

The Commissioner of Labor appealed the Judge's combined decision to the Appeal Board, insofar as it overruled the initial determination reducing the claimant's right to receive future benefits by 220 effective days and charging a civil penalty of \$4,532.02 on the basis that the claimant made willful misrepresentations to obtain benefits. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked both a full-time and concurrent part-time employment as a building superintendent.

On March 30, 2020, the claimant filed a claim for unemployment insurance benefits because he was laid off from his full-time employment due to COVID-19. He had assistance in filing his claim from his son's friend who advised him to indicate zero days or hours in response to questions in his certifications about whether he was working because he earned less than \$450 per week. From March 30, 2020, through April 4, 2021, the claimant certified for benefits that he worked zero days, or hours, although he worked two hours every day during this period.

**OPINION:** Pursuant to the portion of the combined decision not appealed, the claimant was not totally unemployed because he performed services seven days per week as a part-time superintendent for the employer from March 30, 2020, through April 4, 2021. He was compensated for his services with a rent-free apartment and a monthly wage of \$1,000. As a result of his factually false certifications that he had "zero" employment from March 30, 2020, through April 4, 2021, the claimant was overpaid \$30,213.50 in unemployment insurance benefits, Pandemic Emergency Unemployment Compensation (PEUC) and Federal Pandemic Unemployment Compensation (FPUC).

The credible evidence establishes the claimant's factually false certifications were also willfully false certifications. Although his son's friend told him to certify to zero days or hours, until he resumed working, the claimant knew he was still working as a part-time superintendent. The question asked of him was simple and straight forward and did not require special knowledge. Reliance on misinformation from a friend does not excuse false statements regarding working. We therefore conclude that the claimant's false statements are willful misrepresentations and that the imposition of a penalty of 220 effective days and a civil penalty of \$4,532.02 was properly imposed.

**DECISION:** The combined decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The initial determination, reducing the claimant's right to receive future benefits by 220 effective days and charging a civil penalty of \$4,532.02 on the basis that the claimant made willful misrepresentations to obtain benefits, is sustained.

The claimant is denied benefits with respect to the issues decided herein.  
(Al reclamante se le niegan beneficios con respecto a los temas decididos en  
el presente.)

MICHAEL T. GREASON, MEMBER